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3 **UNITED STATES DISTRICT COURT**
4 **DISTRICT OF NEVADA**

5
6 KATHLEEN MARTIN,
7 Plaintiff,
8
9 v.
10 ALBERTSON'S LLC,
11 Defendant.

Case No. 2:24-cv-00973-JAD-NJK

Order

[Docket No. 20]

11 Pending before the Court is Defendant's renewed motion to reopen discovery deadlines
12 and to amend answer to assert a third-party complaint. Docket No. 20. Plaintiff filed a notice of
13 non-opposition. Docket No. 21. The motion is properly resolved without a hearing. *See* Local
14 Rule 78-1.

15 The Ninth Circuit has emphasized the importance of scheduling orders, *see Desio v. State*
16 *Farm Mut. Auto. Ins. Co.*, 339 F.R.D. 632, 641 (D. Nev. 2011) (collecting cases), and has stated
17 bluntly that Rule 16 scheduling orders must "be taken seriously," *Janicki Logging Co. v. Mateer*,
18 42 F.3d 561, 566 (9th Cir. 1994). The Ninth Circuit has further elaborated that "[t]he use of orders
19 setting a firm discovery cutoff date is commonplace, and has impacts generally helpful to the
20 orderly progress of litigation, so that the enforcement of such an order should come as a surprise
21 to no one." *Cornwell v. Electra Cent. Credit Union*, 439 F.3d 1018, 1027 (9th Cir. 2006).

22 A request to extend deadlines in the scheduling order must be premised on a showing of
23 good cause. Fed. R. Civ. P. 16(b)(4); Local Rule 26-3. The good cause analysis turns on whether
24 the subject deadlines cannot reasonably be met despite the exercise of diligence. *Johnson v.*
25 *Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992). "The diligence obligation is
26 ongoing." *Morgal v. Maricopa Cnty. Bd. of Supervisors*, 284 F.R.D. 452, 460 (D. Ariz. 2012).
27 "The showing of diligence is measured by the conduct displayed throughout the entire period of
28 time already allowed." *Williams v. James River Grp. Inc.*, 627 F. Supp. 3d 1172, 1177 (D. Nev.

1 2022). The Court considers whether relief from the scheduling order is sought based on the
 2 development of matters that could not have been reasonably anticipated at the time the schedule
 3 was established. *Jackson v. Laureate, Inc.*, 186 F.R.D. 605, 608 (E.D. Cal. 1999). Courts may
 4 also consider other pertinent circumstances, including whether the movant was diligent in seeking
 5 modification of the scheduling order once it became apparent that the movant required relief from
 6 the deadline at issue. *Sharp v. Covenant Care LLC*, 288 F.R.D. 465, 467 (S.D. Cal. 2012).
 7 “[C]arelessness is not compatible with a finding of diligence and offers no reason for a grant of
 8 relief.” *Johnson*, 975 F.2d at 609. “The party seeking modification of the scheduling order bears
 9 the burden of establishing diligence.” *Desio*, 339 F.R.D. at 638 (citing *Singer v. Las Vegas Athletic*
 10 *Clubs*, 376 F. Supp. 3d 1062, 1077 (D. Nev. 2019)). When diligence has not been shown in support
 11 of an extension request, “the inquiry should end.” *Johnson*, 975 F.2d at 609.

12 When a request for relief from a case management deadline is made after that deadline has
 13 expired, an additional showing of excusable neglect must be made. *Branch Banking & Trust Co.*
 14 *v. DMSI, LLC*, 871 F.3d 751, 764-65 (9th Cir. 2017) (addressing former Local Rule 26-4); *see*
 15 *also* Local Rule 26-3. The excusable neglect analysis is guided by factors that include (1) the
 16 danger of prejudice to the opposing party; (2) the length of the delay and its potential impact on
 17 the proceedings; (3) the reason for the delay; and (4) whether the movant acted in good faith.
 18 *Branch Banking*, 871 F.3d at 765.

19 Here, Defendant has not demonstrated diligence. Defendant submits that, during its own
 20 employee’s deposition, the employee testified that a third-party cleaning company “was still
 21 present in the store and seen in the video surveillance cleaning the substance Plaintiff alleges she
 22 slipped and fell on.” Docket No. 20 at 3. Since the third-party “was present on the date of the
 23 incident and potentially still in the process of cleaning the floors at the time [of] Plaintiff’s
 24 incident,” Defendant seeks leave to amend its answer to add a third-party complaint against the
 25 cleaning company. *Id.* However, Defendant submits that this new information was discovered
 26 during its own employee’s deposition one week before the close of discovery. *Id.* at 4. Defendant
 27 submits that the video surveillance was reviewed prior to the employee’s deposition, but Defendant
 28 had no prior knowledge of this information because there were several of Defendant’s employees

1 seen in the video stocking product. *Id.* As the employees were in “normal street clothing,”
 2 including the cleaning company’s employee, Defendant thought the cleaning company employee
 3 was Defendant’s employee. *Id.* Further, Defendant submits that it had no knowledge that an
 4 employee from a cleaning company would be the one cleaning up the substance because
 5 Defendant’s employees “are typically responsible for cleaning up the spill/substance off of the
 6 floor after an incident occurs.” *Id.* at 5.

7 Despite having this video and access to its employees, Defendant waited to confirm who
 8 was in the video until seven days before the discovery cutoff. *Id.* at 4. The Court is not persuaded
 9 that Defendant could not have discovered who was in *its* video and working in *its* store had it
 10 exercised reasonable diligence throughout the discovery period. Instead, Defendant made
 11 assumptions based on the people’s clothing in the video and its employees’ typical responsibilities
 12 and thus, carelessly failed to confirm the people’s identities. *See id.* at 4-5. Since Defendant has
 13 failed to demonstrate diligence, the Court cannot find good cause to grant the request.¹

14 Accordingly, Defendant’s renewed motion to reopen discovery and to amend answer to
 15 assert a third-party complaint is **DENIED**. Docket No. 20.

16 Further, the parties must file their proposed joint pretrial order by March 6, 2025. *See*
 17 Docket No. 23.

18 IT IS SO ORDERED.

19 Dated: February 24, 2025

20 
 21 Nancy J. Koppe
 22 United States Magistrate Judge

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 27
 28 ¹ As the Court finds that Defendant has not shown good cause, it need not reach the issue
 of excusable neglect.